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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 172.

THE UNITED STATES, Appellant,

v.

THE COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY, Trustee, Appellee.

Appeal from the Court of Claims.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

This is a suit brought by the appellee, The Commonwealth Title Insurance and Trust Company, Trustee, as assignee of one Amanda Cormack, to recover the purchase money paid by her for certain public lands which the General Land Office had erroneously allowed her to enter.

On October 25, 1888, Amanda Cormack made settlement upon and entry for 160 acres of public land in the Helena, Montana, land district, paying therefor at the rate of $1.25 per acre. She continued to reside thereon until April 30, 1890, when she made final proof, which was accepted on May 9, 1890, and final receipt and certificate were thereupon issued to her.

On May 12, 1890, she executed a mortgage on the land included in her entry to the Northwestern Guaranty Loan

Company to secure the payment of her note for $300, which said note and mortgage were, on June 9, 1890, assigned for value by said company to The Commonwealth Title Insurance and Trust Company, Trustee, the appellee herein.

On August 16, 1894, the Commissioner of the General Land Office canceled said entry as to 120 acres thereof, because the township wherein said land is situated had been selected and recommended for reservoir purposes on January 8, 1890.

Thereafter the appellee brought suit to foreclose said mortgage and, after proper proceedings, on August 16, 1897, the mortgaged premises were sold to the appellee for $230, and in due course a sheriff's deed therefor was executed and delivered.

Subsequently the appellee applied to the Commissioner of the General Land Office for repayment of $150, the purchase price of the 120 acres erroneously allowed to be entered, which said application was refused by the Commissioner; but, upon appeal to the Secretary of the Interior, the decision of the Commissioner was reversed, and repayment allowed upon the condition that the appellee relinquish to the United States all claim to the land so canceled.

The appellee duly filed its relinquishment, as required by the rules and regulations of the General Land Office, and the claim was transmitted to the Treasury Department for final settlement. The Auditor of the Treasury for the Interior Department favorably passed upon said claim, but his action was overruled and payment of the claim refused by the Comptroller of the Treasury.

On November 26, 1900, the claimant filed its petition in the Court of Claims, and on November 3, 1902, said Court rendered a judgment in favor of the claimant in the sum of $150.

From this judgment the appellant has prosecuted an appeal to this Court.

Argument.

I.

The allowance of appellee's claim by the Secretary of the Interior under section 2 of the Act of June 16, 1880 (21 Stat. L., 287), is conclusive in the absence of fraud or mistake.

Said Act provides, *inter alia:*

> That in all cases where it shall, upon due proof being made, appear to the satisfaction of the Secretary of the Interior that innocent parties have paid the fees and commissions * * * the Secretary of the Interior is authorized to repay to such innocent parties the fees and commissions * * * out of any money in the Treasury not otherwise appropriated, and shall be payable out of the appropriation to refund purchase-money on lands erroneously sold by the United States.
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> Sec. 2. In all cases where homestead or timber-culture or desert-land or other entries of public lands have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry has been erroneously allowed and cannot be confirmed, the Secretary of the Interior shall cause to be repaid to the person who made such entry, or to his heirs or assigns, the fees and commissions, amount of purchase money, and excesses paid upon the same, upon the surrender of the duplicate receipt and the execution of a proper relinquishment of all claims to said land, whenever such entry shall have been duly canceled by the Commissioner of the General Land Office. * * *
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> Sec. 3. The Secretary of the Interior is authorized to make the payments herein provided for out of any money in the Treasury not otherwise appropriated.
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> Sec. 4. * * * and for the repayment of the purchase money and fees herein provided for the Secretary of the Interior shall draw his warrant on the Treasury and the same shall be paid. * * *

It is clear that the foregoing statute vests in the Secretary of the Interior exclusive original jurisdiction and that his

allowance of a claim thereunder is not, in the absence of fraud or mistake, subject to review either by the accounting officers of the Treasury or by the Court of Claims. This principle is well established by the construction of section 3220 of the Revised Statutes of the United States, which bears a close analogy to the statute under consideration.

Said section provides that the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, shall refund certain taxes, penalties, etc.

In the case of Woolner *v.* The United States, 13 Ct. Clms. R., 362, the Court of Claims held that the allowance of a claim by the Commissioner of Internal Revenue under said section 3220 of the Revised Statutes was conclusive, and could not be reviewed by any other officer or tribunal.

In First National Bank of Greencastle *v.* The United States, 15 Ct. Clms. R., 228, the Court said:

> By these provisions Congress has conferred upon the Commissioner of Internal Revenue the power and duty of passing upon the merits and *validity* of all claims for refund of taxes therein specified. * * *
>
> If the decision is in his favor and the Commissioner makes and certifies to an allowance, the liability becomes fixed and the claimant's right to payment established. He is not required to follow the certificate through all the ramifications of the Treasury Department and to prove the original claim anew, before all or any of the officers of the department through whom the certificate must pass in the process of accounting, in order to the drawing of a warrant and the issuing of a check on the Treasury for its payment. * * *
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> Nor is the claimant required to re-establish his original claim in this court when suit is brought upon the Commissioner's allowance. He may rest his case upon the certificate of the Commissioner until it is impeached.

The doctrine announced by the Court of Claims in the decisions cited *supra* has been sanctioned by this Court in a number of cases.

In United States *v.* Savings Bank, 104 U. S., 728, it is said:

> All we said then, and all we say now is, that if payment is not made by reason of the refusal of any of the officers of the department to pass or pay the claim after it has once been allowed by the Commissioner, the allowance may be used as the basis of an action against the United States in the Court of Claims, where it will be prima facie evidence of the amount that is due, and put on the Government the burden of showing fraud or mistake. This burden is not overcome by proving that some other officer in the subsequent progress of the claim through the department declined to do what the law or treasury regulations required of him before payment could be obtained. The fact of fraud or mistake must be established by competent evidence the same as any other fact in issue.

Thomas B. Dugan *v.* United States, 34 Ct. Clms. R., 469;

United States *v.* Kaufman, 96 U. S., 567;

United States *v.* American Tobacco Company, 166 U. S., 468.

What has been said by the Court of Claims and by this Court as to the conclusiveness of an allowance by the Commissioner of Internal Revenue under section 3220 of the Revised Statutes applies with greater force to an allowance by the Secretary of the Interior under the Act of June 16, 1880. The Commissioner is a bureau officer of the Treasury Department and his allowances are required by the statute to be made subject to regulations prescribed by the Secretary of the Treasury; while the Secretary of the Interior is the head of an independent department, and the executive officer authorized by the statute to make the rules and regulations is a bureau officer of the Interior Department.

In the case of Medbury *v.* The United States, 173 U. S., 492, this Court held that the Court of Claims has jurisdiction of a claim under the Act of June 16, 1880, when such claim

has been *disallowed* by the Secretary of the Interior upon a misconstruction of the law, but that a claimant has no cause of action until his claim has been so *disallowed*. It necessarily follows from this holding that if the Secretary of the Interior *allows* a claim, such allowance is conclusive and constitutes a fixed liability on the part of the United States.

II.

But assuming, *pro argumento*, that the allowance of the Secretary of the Interior is subject to review where it is based upon the construction of the statute, the appellee is the assignee of the original entryman within the meaning of the Act.

In Hoffeld *v.* United States, 186 U. S., 273, it is held that the "assigns" contemplated by the Act of June 16, 1880, are "voluntary assigns."

In that case the Court said:

> A voluntary assignee is ordinarily vested with all the rights which his assignor possessed with respect to the property, while the rights of an assignee by operation of law are such only as are necessarily incident to the complete possession and enjoyment of the things assigned. A voluntary assignee takes the property with all the rights thereto possessed by his assignor, and if he has paid a valuable consideration, may claim all the rights of a bona fide purchaser with respect thereto.

The execution of the mortgage by the original entryman was her voluntary act, and she thereby conveyed to the mortgagee all of her right, title, and interest in and to the mortgaged premises, subject to her equity of redemption; and when the appellee received the sheriff's deed, in pursuance of the foreclosure proceedings, whereby the equity of redemption was forever barred and foreclosed, its title related back to the date of the execution of the mortgage, and

it thereby acquired absolutely all the right, title, and interest held by the mortgagor at date of the mortgage.

In Barnard *v.* Wilson, 74 Cal., 519, it is said:

> In Land Association *v.* Viera, *supra* (48 Cal., 572), it was held that when a mortgage conveys the estate in fee, a decree enforcing the same is in effect a decree that the estate, vested in the mortgagor at the date of the mortgage, as well as that which shall at any time come to him, be sold; and that the sheriff's deed to the purchaser operates to transfer to such purchaser the estate so directed to be sold.

To the same effect, in Champion *v.* Hinkle, 45 N. J. Eq., 164, the Court said:

> In a suit by a mortgagee to enforce his mortgage, whether by *scire facias* or by bill for foreclosure and sale, a purchaser at the sale of the mortgaged premises takes the place of the mortgagee in strict foreclosure at common law. *His title relates back to the time of the execution of the mortgage. He succeeds as well to the title and estate acquired by the mortgagee, by the delivery of the mortgage deed, as to the estate the mortgagor had at the time of the execution of the mortgage.*

In Taylor *v.* Kearn, 68 Ill., 344, it appeared that the appellant had purchased a tract of land from the School Commissioner and had received a certificate of purchase. Subsequently, and before the execution and delivery of a deed to him, he executed a mortgage, which was afterwards foreclosed. In this case the Court said:

> The foreclosure, although erroneous, related back to the date of the mortgage. The Court had the necessary jurisdiction to render a valid and binding judgment, and it must be held conclusive upon the parties, however erroneous. And relating back to the date of the mortgage, the effect was the same as though the mortgagor had then transferred the certificate of purchase by absolute assignment.

Vroom *v.* Ditmas, 4 Paige Ch. Rep., 526;
Poweshiek County *v.* Dennison, 36 Iowa, 248;
De Haven *v.* Laudell, 31 Pa. St., 124;
Ritger *v.* Parker, 8 Cush. (Mass.), 149;
Kerr's Suppl. to Wiltsie on Mortgage Foreclosures, Sec. 582;
1 Wiltsie on Mortgage Foreclosures, p. 697;
2 Jones on Mortgages, p. 548.

It is therefore clear that the appellee is a voluntary assignee of the original entryman, and as such is entitled to the repayment of the purchase money.

It is contended on behalf of the appellant that the assignees contemplated by the statute are not the assignees of the land but those created by voluntary instruments expressly assigning the right to the repayment.

The Secretary of the Interior has uniformly held that the right of repayment under section 2, act of June 16, 1880, is restricted to assignees of the land, and does not extend to persons holding an assignment of the claim for the money paid on the entry. Instructions, 21 Land Decisions, 366.

This uniform construction of the statute by the executive officer charged with its execution is entitled to great weight.

Edwards *v.* Darby, 12 Wheat., 210;
United States *v.* Philbrick, 120 U. S., 52;
United States *v.* Healey, 160 U. S., 136;
H. & D. R. R. Co., *v.* Whitney, 132 U. S., 366.

The provision of the act itself, which requires the execution of a relinquishment of all claim to the land, clearly shows that the assignees entitled to repayment are the grantees of the land. It would be an absurdity to require a mere personal assignee, who never claimed any interest in the land, to relinquish all claim to the land.

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III.

It is further contended on behalf of the appellant that the facts found by the court below do not support the judgment rendered, because the findings of fact do not specifically state that the appellee surrendered the duplicate receipt, as required by the statute.

The finding that the Secretary of the Interior allowed the appellee's application for repayment amounts to a finding that the appellee had complied with all the requirements of the statute and of the regulations of the General Land Office, made in pursuance thereof. Whether or not it had surrendered the duplicate receipt, executed a relinquishment of all claim to the land, etc., are matters of fact that are merged in the Secretary's allowance. It appears, however, that the duplicate receipt was duly surrendered to the Secretary of the Interior (Rec., 8).

It is therefore respectfully submitted that there is no error disclosed in the record, and that the judgment of the court below should be affirmed.

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Attorney for Appellee.